



No. 82-1325

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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**I.A.M. NATIONAL PENSION FUND, PETITIONER**

**v.**

**MADGE H. ELSER, ET AL.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS**

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### **QUESTION PRESENTED**

Whether the court of appeals correctly concluded that federal courts have authority under Sections 404(a)(1) and 502(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1104(a)(1) and 1132(a), to review the adoption and application by plan trustees of employee pension benefit plan eligibility requirements.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

## STATEMENT

1. Petitioner (the "Fund") operates a multiemployer pension plan. The plan was created in 1960 by the International Association of Machinists and Aerospace Workers (I.A.M.) and several employers of I.A.M.-represented employees (Pet. App. 29a). The plan is administered by trustees designated by the international union and participating employers (*ibid.*). The plan provides that employees must have at least ten years of "credited service" to qualify for pension benefits (*ibid.*). Credited service is comprised of both "past service credit" (*i.e.*, credit for periods of eligible employment prior to an employer's initial contribution) and "future service credit" (*i.e.*, credit for periods of covered

employment during which contributions were actually made) (*ibid.*). An employee with ten years of credited service is entitled to a pension when the employee reaches age 50 (*ibid.*).

The plan provides for retroactive cancellation of all past service credit should an employer cease making contributions to the Fund but remain in business (Pet. App. 30a). Employees whose pensions have vested may thus lose their pensions if their employers cease making contributions to the Fund at a time when the employees have fewer than ten years of future service credit.<sup>1</sup>

The plan contains a number of exceptions to this forfeiture provision (Pet. App. 30a). Past service credit will not be cancelled for employees who already are receiving pensions, and for employees who left their employment more than 24 months before or within 30 days after their employer's termination of participation (*ibid.*). The plan also allows reinstatement of past service credit if the covered employee earns at least five more years of future service credit within eight years of his employer's termination of participation (*ibid.*).

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<sup>1</sup>According to petitioner, the forfeiture provision at issue is required to protect the Fund against unfunded liabilities (Pet. 6-7; footnotes omitted):

Any unfunded past service liability left behind by employers who withdraw after relatively short periods of participation must \* \* \* be made up by the remaining participants and employers.

As a measure of protection against the risk that an employer's participation will *not* continue long enough to discharge his unfunded liability, the Fund Trustees have adopted certain safeguards against employer termination which enable the Fund to avoid any further liability attributable to a terminated employee group's "past service". \* \* \* These provisions are intended to protect the Fund against the "dumping" of unfunded liability attributable to past service by providing employers and employee groups with an incentive to insure that employers' contributions to the Fund continue.

Waste King, the former employer of respondents Madge Elser and Margaret Thomas, began contributing to the pension plan on January 1, 1969, pursuant to its 1968 collective bargaining agreement with I.A.M. District Lodge No. 94 (Pet. App. 30a). In December 1974, approximately 50 of Waste King's employees met to consider decertifying the I.A.M. union as their collective bargaining representative (*ibid.*). The collective bargaining agreement between Waste King and the union expired on January 31, 1975, at which time Waste King ceased contributing to the plan. The union lost a decertification election approximately one month later (*ibid.*). Thereafter, on June 3, 1975, the Fund notified Waste King and the union that, pursuant to the above-described forfeiture provision of the plan, all past service credit accumulated by plan participants who had not left the employ of Waste King 24 months before or 30 days after January 31, 1975, had been cancelled (*ibid.*).<sup>2</sup>

2. On June 30, 1978, Elser and Thomas, individually and on behalf of all others similarly situated, filed an action in the United States District Court for the Central District of California seeking injunctive and declaratory relief pursuant to Section 302(c)(5) and (e) of the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. 186(c)(5) and (e), and Sections 404(a)(1) and 502(a) and (e) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104(a)(1), 1132(a) and (e) (Pet. App. 32a).<sup>3</sup> They sought, *inter alia*, a judgment declaring that the cancellation of past service credit was unlawful, and therefore null

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<sup>2</sup>No plan participant avoided the forfeiture for past service by leaving the employment of Waste King during the 30-day grace period provided by the Fund (Pet. App. 32a).

<sup>3</sup>Section 302(c)(5) of the LMRA is an exception to the prohibition in Section 302 making it "unlawful for any employer or association of employers" to pay any money or other thing of value to employee representatives; it provides that the proscriptions of Section 302 are not applicable:

and void, and that plaintiffs and the class they represented were thus eligible for pensions under the plan (Pet. App. 32a). The plaintiff class consisted of 75 employees or former

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with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) \* \* \*.

Section 302(e) of the LMRA, 29 U.S.C. 186(e), provides that the "district courts \* \* \* shall have jurisdiction, for cause shown, \* \* \* to restrain violations of this section \* \* \*".

Section 404(a) of ERISA, 29 U.S.C. 1104(a), provides in pertinent part as follows:

(1) [A] fiduciary shall discharge his duties with respect to [an employee benefit] plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan \* \* \*.

Section 502(a) of ERISA, 29 U.S.C. 1132(a), provides in pertinent part that:

A civil action may be brought—

\* \* \* \* \*

(3) by a participant [or] beneficiary \* \* \* (A) to enjoin any act or practice which violates any provisions of this subchapter \* \* \*, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter \* \* \*.

Section 502(e) of ERISA, 29 U.S.C. 1132(e), provides in pertinent part that:

[T]he district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by \* \* \* a participant [or] beneficiary \* \* \*.

employees of Waste King with at least ten years of continuous service with that employer who had lost their past service credit (*id.* at 33a).<sup>4</sup>

After class certification pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the district court, based on stipulated facts, entered judgment for respondents, finding that the trustees' actions in adopting and applying eligibility rules for pension benefits that cancelled respondents' past service credit violated both Section 302(c)(5) of the LMRA and Section 404(a)(1) of ERISA (Pet. App. 23a, 24a). The district court concluded that the Fund's forfeiture provisions were arbitrary and capricious on their face and as applied, because they permitted employees who had left Waste King 24 months before it discontinued contributions to receive pensions, but denied pensions to employees who had worked for Waste King for a longer period of time and on whose behalf Waste King had made contributions to the Fund for a longer period of time (*id.* at 6a, 8a).<sup>5</sup> The district court declared the trustees' cancellation action null and void, and permanently enjoined the Fund "from calculating service credit for pension purposes as to Plaintiffs Elser and

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<sup>4</sup>The district court divided the class into two subclasses. Subclass No. 1 included nonretired employees who left Waste King employment before January 31, 1975, but within 24 months before decertification of the I.A.M. union and withdrawal from the Fund by Waste King (Pet. App. 33a). Subclass No. 2 included persons employed by Waste King at the time of decertification and withdrawal (*ibid.*). There were ten employees in Subclass No. 1 and 65 in Subclass No. 2 (*id.* at 11a).

<sup>5</sup>The district court concluded that there had been a violation of Section 302(c)(5) for two additional reasons: because respondent Thomas did not receive adequate notice of the plan's forfeiture provisions and because the application of the cancellation and relief provisions caused a sizeable exclusion of employees from pension benefits without a reasonable justification for this exclusion (Pet. App. 7a). In light of its disposition of the case (see pages 6-8, *infra*), the court of appeals found it unnecessary to reach these issues (Pet. App. 46a n.19).

Thomas and the class they represent without referring to and applying said employees' past service credit" (*id.* at 21a).

3. The court of appeals affirmed. The court first discussed (Pet. App. 35a) *United Mine Workers of America Health & Retirement Funds v. Robinson*, 455 U.S. 562 (1982), in which this Court held that the "sole and exclusive benefit" provision of Section 302(c)(5) of the LMRA does not embody any "reasonableness requirement" and that its "plain meaning is simply that employer contributions to employee benefit trust funds must accrue to the benefit of employees and their families and dependents, to the exclusion of all others" (455 U.S. at 570). The court of appeals observed, however, that the eligibility requirements and benefit levels of the plan considered in *Robinson* had not been established by the plan's trustees but instead had been fixed through a collective bargaining agreement, and that this Court "recognized a distinction" between these two situations (Pet. App. 35a-36a). Nevertheless, the court of appeals concluded that it need not decide whether this distinction authorized it to enforce the fiduciary duties imposed on trustees by the LMRA (*id.* at 37a). Citing this Court's decision in *NLRB v. Amax Coal Co.*, 453 U.S. 322, 332 (1981), the court of appeals stated that ERISA imposes "strict fiduciary standards" on plan trustees and concluded that it had jurisdiction to review their actions under that statute (Pet. App. 37a).

Having established its jurisdiction under ERISA, the court of appeals held that "[t]he actions of trustees are subject to the same standard of review under the ERISA's fiduciary provisions as they are under the LMRA" (Pet. App. 38a). It stated that "[t]he court's affirmative participation should be limited to 'those cases where the eligibility requirements are so patently arbitrary and unreasonable as to lack foundation in factual basis and/or authority in

governing case or statute law' " (Pet. App. 41a, quoting *Roark v. Lewis*, 401 F.2d 425, 429 (D.C. Cir. 1968)). The court added that it would substitute its judgment for that of the trustees " 'only if the actions of the trustees are not grounded on any reasonable basis' " (Pet. App. 41a, quoting *Ponce v. Construction Laborers Pension Trust*, 628 F.2d 537, 542 (9th Cir. 1980)).

Applying this standard, the court of appeals noted that the requirements of the plan denied pensions to respondents while giving pensions to employees who had worked a substantially lesser period of time (Pet. App. 42a).<sup>6</sup> In these circumstances, the court concluded, "the Fund had the burden of showing some rational nexus between the Fund's purpose and the forfeiture provisions" (*id.* at 45a-46a).<sup>7</sup> Because the Fund did not offer any actuarial evidence to meet this burden, the court concluded that "the cancellation provisions depriving the [respondents] of past service credit are arbitrary and capricious, and have a structural defect in

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<sup>6</sup>As the court of appeals explained (Pet. App. 42a):

An employee who left Waste King employment more than twenty-four months before [January 31, 1975] did not forfeit past service credit, even if that employee had only one year of future service and nine years of past service. On the other hand, members of the plaintiff class who had up to six years of employment while Waste King was making payments into the fund, lost all past service credit. Appellees actually worked for a contributing employer for as many as six years and received no benefits, while others who may have worked only one year for a contributing employer could receive benefits (upon reaching age 50) simply because they left the employer more than two years before the union decertification.

<sup>7</sup>In concluding that the Fund had the burden of explaining why "the cancellation provisions \* \* \* were necessary to preserve the financial soundness of the Fund" (Pet. App. 46a), the court of appeals followed the rulings in *Roark v. Lewis*, 401 F.2d 425, 429 (D.C. Cir. 1968), and *Central Tool Co. v. International Association of Machinists National Pension Fund*, 523 F.Supp. 812, 816-818 (D.D.C. 1981), appeal pending, Nos. 81-2047 & 81-2056 (D.C. Cir.).

violation of § 302 of the LMRA and § 404 of the ERISA \* \* \* (Pet. App. 46a).<sup>8</sup>

### ARGUMENT

The decision below is the first by a court of appeals to address the question whether the federal courts have jurisdiction under the "solely in the interest" requirement of Section 404(a)(1) of ERISA to review the adoption and application by trustees of pension plan eligibility requirements.<sup>9</sup> The court of appeals' affirmative answer to this

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<sup>8</sup>Although the court of appeals did not determine whether the district court had jurisdiction under the LMRA to remedy the alleged violation, it did rely on the well developed substantive law under Section 302(c)(5) relating to the obligations of trustees of Section 302(c)(5) plans. As the Third Circuit has explained (*Knauss v. Gorman*, 583 F.2d 82, 86 (1978)):

Day-to-day discretionary decisions by the administrators of funds are not subject to continuous audit by federal courts. However, where a settled requirement capriciously excludes employees from benefits, it is not the prudence of the plan's administration which is at issue, but the fairness of its basic structure. Such an exclusion constitutes a failure to conform to the "sole and exclusive benefit" requirement, and thus may be reviewed in the federal courts without doing violence to the Congressional intent.

Accord, *Sellers v. O'Connell*, 701 F.2d 575, 577 (6th Cir. 1983); *Valle v. Joint Plumbing Industry Board*, 623 F.2d 196, 201 n.8 (2d Cir. 1980); *Johnson v. Botica*, 537 F.2d 930, 933-934 (7th Cir. 1976); *Alvares v. Erickson*, 514 F.2d 156, 165-167 (9th Cir.), cert. denied, 423 U.S. 874 (1975); *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968).

<sup>9</sup>In an earlier decision, *Fentron Industries, Inc. v. National Shopmen Pension Fund*, 674 F.2d 1300 (9th Cir. 1982), the court of appeals reached a result similar to that reached here through reliance on a different provision of ERISA. There, the court viewed the divesting of employees' past service credit as an amendment to the plan's vesting schedule. Such an amendment triggered the requirement of Section 203(c)(1)(B) of the Act, 29 U.S.C. 1053(c)(1)(B), that an employee be given an election "to have his nonforfeitable percentage [of his accrued benefit] computed under the plan without regard to such amendment." Because the employees were not given that election, the court struck down the amendment (674 F.2d at 1306). The court expressly declined to decide whether the trustees' conduct also violated other provisions of ERISA (*id.* at 1306 n.8).

jurisdictional question does not conflict with any decision of this Court or of any other federal court. Moreover, it accords appropriate recognition to Congress' comprehensive purposes in enacting ERISA, including the goal of "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and \* \* \* providing for appropriate remedies, sanctions, and ready access to the Federal courts" (29 U.S.C. 1001(b)). In these circumstances, we suggest that further review is unnecessary.

It is also important to emphasize that the petition in this case is essentially limited to the jurisdictional issue of reviewability of the trustees' decisions to include particular benefit eligibility provisions in their pension plans. In our submission, the court of appeals correctly resolved that issue. Because it is unnecessary to do so in the posture of this case, we take no position on the question whether the court of appeals correctly invalidated the forfeiture provision at issue in petitioner's plan. We note only our view that judicial oversight of pension plan trustees' decisions should be governed by a highly deferential standard of review; we do not here endorse the notion that the trustees' decisions must satisfy a court's concept of the best way to achieve the plan's aims. But whether the court of appeals applied a sufficiently deferential standard of review with regard to the particular plan provision challenged by respondents is a fact-bound issue not requiring this Court's consideration.

1. Petitioner principally contends (Pet. 14) that there is a "patent conflict" between the decision of the court of appeals and this Court's decision in *Robinson*. Although there is obviously some surface similarity between *Robinson* and the decision below, the court of appeals could reasonably conclude that *Robinson* is not controlling here

for two distinct reasons. First, *Robinson* did not decide whether federal courts are authorized to review pension plan eligibility provisions imposed by plan trustees; the decision was concerned only with provisions arrived at through collective bargaining. Second, *Robinson* dealt with the federal courts' reviewing authority under the LMRA, not ERISA.

a. In *Robinson*, the United Mine Workers and the Bituminous Coal Operators' Association agreed, after " 'explicit, informed and intense bargaining' " (455 U.S. at 569), to a provision in their collective bargaining agreement that discriminated between two classes of widows of coal miners who died prior to December 6, 1974. Widows of miners who had continued to work after they were entitled to pensions and who had spent most of their working lives in the employ of contributing employers were denied lifetime health benefits, while widows of employees who had elected to receive their pensions received such lifetime benefits. The court of appeals, relying on Section 302(c)(5), held that any rule denying benefits to employees on whose behalf significant contributions had been made must be satisfactorily explained, particularly if benefits were authorized for others who had worked a lesser period of time. *Robinson v. United Mine Workers of America Health & Retirement Funds*, 640 F.2d 416, 421 (D.C. Cir. 1981).

This Court reversed. It held that Section 302(c)(5) of the LMRA does not authorize federal courts to review for reasonableness the provisions of a collective bargaining agreement allocating health benefits among potential beneficiaries of an employee benefit trust fund. The Court concluded that the plain meaning of Section 302(c)(5) "is simply that employer contributions to employee benefit trust funds must accrue to the benefit of employees and their families and dependents, to the exclusion of all others"

(455 U.S. at 570). The Court emphasized that the "nondiversion purpose" of Section 302(c)(5) was "amply supported by the legislative history" (455 U.S. at 571)<sup>10</sup> and by the fact that Section 302(c)(5) is an exception to a criminal statute (455 U.S. at 572).

The Court distinguished authorities relied upon by the court of appeals as cases in which "trustees of employee benefit trust funds, not the collective-bargaining agreement, fixed the eligibility rules and benefit levels" (455 U.S. at 573).<sup>11</sup> By contrast, the Court noted that in *Robinson* (*id.* at 573-574) (footnote omitted):

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<sup>10</sup>The Court noted (455 U.S. at 571-572) that:

[Section 302(c)(5)] was meant to protect employees from the risk that funds contributed by their employers for the benefit of the employees and their families might be diverted to other union purposes or even to the private benefit of faithless union leaders. Proponents of this section were concerned that pension funds administered entirely by union leadership might serve as "war chests" to support union programs or political factions, or might become vehicles through which "racketeers" accepted bribes or extorted money from employers.

<sup>11</sup>The Court continued (455 U.S. at 573) (footnote omitted):

The Court of Appeals has held in those cases "that the Trustees have 'full authority . . . with respect to questions of coverage and eligibility' and that the court's role is limited to ascertaining whether the Trustees' broad discretion has been abused by the adoption of arbitrary or capricious standards." *Pete v. United Mine Workers of America Welfare & Retirement Fund of 1950*, 171 U.S. App. D.C. 1, 9, 517 F.2d 1275, 1283 (1957) (*en banc*) (footnote omitted). Noting that "[t]he institutional arrangements creating this Fund and specifying the purposes to which it is to be devoted are cast expressly in fiduciary form," the court stated that "the Trustees, like all fiduciaries, are subject to judicial correction in a proper case upon a showing that they have acted arbitrarily or capriciously towards one of the persons to whom their trust obligations run." *Kosty v. Lewis*, 115 U.S. App. D.C. 343, 346, 319 F.2d 744, 747 (1963), cert. denied, 375 U.S. 964. Those cases, however, provide no support for the Court of Appeals' holding in this case.

The petitioner trustees were not given "full authority" to determine eligibility requirements and benefit levels, for these were fixed by the 1974 collective-bargaining agreement. By the terms of the trust created by that agreement, the trustees are obligated to enforce these determinations unless modification is required to comply with applicable federal law. The common law of trusts does not alter this obligation.

Accordingly, the Court expressly declined to decide whether federal courts sitting as courts of equity are authorized to enforce traditional fiduciary duties imposed upon Section 302(c)(5) trustees (455 U.S. at 573 n.12).

b. This case presents no occasion for the Court to decide the issue that it left open in *Robinson* because the court of appeals rested its jurisdiction on ERISA rather than the LMRA. Nevertheless, it is worth noting that every court that has considered the issue has rejected petitioner's argument that *Robinson* foreclosed the very question that it expressly left open. *Sellers v. O'Connell*, 701 F.2d 575, 577 (6th Cir. 1983) ("Absent a clearer indication that *Robinson* governs trust fund rules formulated by trustees as well as those included in collective bargaining agreements, we hold that [29 U.S.C.] § 186(e) provides jurisdiction over [claims that pension fund eligibility rules are arbitrary and capricious]"); *Hurn v. Retirement Fund Trust of the Plumbing, Heating & Piping Industry*, 703 F.2d 386, 389 (9th Cir. 1983); *Harm v. Bay Area Pipe Trades Pension Plan Trust Fund*, 701 F.2d 1301, 1305 n.4 (9th Cir. 1983); *Sinai Hospital of Baltimore, Inc. v. National Benefit Fund for Hospital & Health Care Employees*, 697 F.2d 562, 567-568 (4th Cir. 1982); *Dudo v. Schaffer*, 551 F.Supp. 1330, 1337-1338 (E.D. Pa. 1982); *Kozlesky v. Board of Trustees*, 546

F. Supp. 466, 468 n.1 (E.D. Mich. 1982).<sup>12</sup> All of these courts have relied on the distinction, recognized in *Robinson*, between collectively-bargained and trustee-determined eligibility requirements to conclude that federal courts are authorized to review trustee-determined requirements under an arbitrary and capricious test.<sup>13</sup>

c. Irrespective of what the outcome in this case would be if it had arisen solely under Section 302(c)(5) of the LMRA, the complaint also charged a violation of Section 404 of ERISA, and the court of appeals based its jurisdiction to review the trustees' action on that statute. In these circumstances, *Robinson* is not controlling.

As the Court noted in *Robinson*, *supra*, 455 U.S. at 572, Section 302(c)(5) is an exception to a criminal provision in the LMRA, the purpose of which is to assure the non-diversion to unions of employer contributions to pension trusts. Arguably, the goals of Section 302(c)(5) are fully satisfied so long as no diversion of employer contributions occurs. That may be particularly so because "judicial review

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<sup>12</sup>The Fund relies on this Court's summary action in *Western Conference of Teamsters Pension Trust Fund v. Music*, No. 81-2283 (Oct. 4, 1982), reversed on remand, (9th Cir. Aug. 2, 1983), in which the Court vacated the judgment of the court of appeals and remanded for further consideration in light of *Robinson*. *Music* involved pension eligibility provisions fixed by fund trustees. The Ninth Circuit, in its subsequent opinion in *Hurn*, *supra*, decided after the *Music* remand, found *Robinson* "inapplicable" on the ground that *Robinson* involved a collective bargaining agreement (*Hurn*, *supra*, 703 F.2d at 389).

<sup>13</sup>Petitioner contends (Pet. 16 n.15) that it makes no sense to draw a distinction between collectively-bargained and trustee-determined eligibility requirements because "it would be a simple matter for collective bargaining parties routinely to shield trustee-adopted eligibility rules from scrutiny by simply incorporating them by reference into collective bargaining agreements." But there is no need at this juncture for the Court to concern itself with speculation as to the effect of conduct that might be taken in the future to avoid a particular judicial result.

under an undefined standard of reasonableness" (*Robinson, supra*, 455 U.S. at 574) makes uncertain the standard of conduct needed to escape criminal responsibility.

In contrast to Section 302 of the LMRA, ERISA is remedial civil legislation. As this Court has observed, it is a " 'comprehensive and reticulated statute,' which Congress adopted after careful study of private retirement pension plans." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 510 (1981), quoting *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 362 (1980). It was enacted to assure " 'the continued well-being and security of millions of employees and their dependents \* \* \* directly affected' " by employee benefit plans (29 U.S.C. 1001(a)). ERISA imposes myriad obligations on employers and trustees respecting the manner in which pension and welfare benefit plans are established, administered and terminated.<sup>14</sup> There can be no doubt that Congress contemplated and intended comprehensive regulation of the activities of employee benefit plan fiduciaries.

Against the background of this network of regulation, petitioner's contention that *Robinson* should be read to limit the scope of Section 404 is unpersuasive. Section 404's requirement that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries" clearly places bounds on the manner in which plan trustees may administer pension eligibility rules. See *Winpisinger v. Aurora Corp.*, 456 F. Supp. 559, 566 n.4,

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<sup>14</sup>As this Court noted in *Alessi, supra*, 451 U.S. at 510 n.5, "[t]o ensure that employee pension expectations are not defeated, the Act establishes minimum rules for employee participation, §§ 1051-1061; funding standards to increase solvency of pension plans, §§ 1081-1085; fiduciary standards for plan managers, §§ 1101-1114; and an insurance program in case of plan termination, §§ 1341-1348 (1976 ed. and Supp. III)."

573 (N.D. Ohio, 1978). That conclusion follows not only because the Act incorporates common law fiduciary duties, see *NLRB v. Amax Coal Co.*, *supra*, 453 U.S. at 331-332,<sup>15</sup> but also because it amplifies those obligations and requires courts to "interpret \* \* \* fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act." H.R. Rep. No. 93-533, 93d Cong., 1st Sess. 12 (1973); S. Rep. No. 93-127, 93d Cong., 1st Sess. 29 (1973). A major purpose of the Act was to end employer practices that had resulted in "many employees \* \* \* losing anticipated retirement benefits owing to the lack of vesting provisions in [pension] plans." 29 U.S.C. 1001(a). Congress rectified this situation by enacting minimum vesting standards (29 U.S.C. 1053(a)(2)) and imposed upon trustees in the administration of those standards "a duty of fairness to all—not just some of the covered employees." *Winpisinger v. Aurora Corp.*, *supra*, 456 F.Supp. at 573.

It is equally clear that federal courts have jurisdiction to entertain an action charging a breach of these duties. The jurisdictional provisions of the Act permit participants and

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<sup>15</sup>For example, the House Report on ERISA states (H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 295 (1974)):

*Fiduciary responsibility rules, in general*

The conference substitute establishes rules governing the conduct of plan fiduciaries under the labor laws (title I) \* \* \*. The labor law provisions apply rules and remedies similar to those under traditional trust law to govern the conduct of fiduciaries.

Similarly, Representative Dent, a leading sponsor of ERISA, stated that "[t]hese standards, embodying existing trust concepts, will prevent abuses of the special responsibilities borne by those dealing with plans." 120 Cong. Rec. 29196-29197 (1974). Senator Williams, a leading sponsor in the Senate, stated that "[t]he objectives of these provisions are to make applicable the law of trusts." 120 Cong. Rec. 29932 (1974).

beneficiaries (as well as the Secretary of Labor) to bring civil actions to enjoin any act or practice that violates the Act and to obtain appropriate equitable relief and redress of violations. 29 U.S.C. 1132. Accordingly, the court of appeals correctly held that the district court had jurisdiction under ERISA to scrutinize the trustees' actions in adopting and implementing the eligibility rules in this case.<sup>16</sup>

2. Petitioner also contends (Pet. 18-22) that the decision below authorizes courts to impose more stringent substantive standards of pension eligibility than are required by ERISA. As petitioner correctly notes (Pet. 18-20), ERISA does not require *any* credit for preplan service, nor does it prohibit the cancellation of past service credit when an employer ceases contributions to the plan. See 29 U.S.C. (&

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<sup>16</sup>At common law trustees had an obligation to deal impartially with the beneficiaries of the trust. In the ERISA context, carrying out that obligation does not necessarily require that each beneficiary be treated identically. Thus, the court of appeals may have placed too heavy a burden of explanation on plan trustees when it held that they must show "that the [forfeiture] provisions were necessary to protect the financial soundness of the Fund" (Pet. App. 46a). See also page 9, *supra*. But there is no need for review of this issue, because the Ninth Circuit has clarified the point in a subsequent decision. In *Harm v. Bay Area Pipe Trades Pension Plan Trust Fund*, *supra*, 701 F.2d at 1306 n.7, the court explained:

Only some decisions need be shown "necessary to protect the soundness of the Fund." If, as in *Elser*, the only explanation offered for a change in benefits is that it was compelled by financial necessity, there must be some evidence that such is the case. Other rules may represent a choice among competing policies or rely on behavioral predictions that are not susceptible to verification. In this latter group are the break-in-employment rules, which rest on the trustees' prediction that employees will be encouraged to seek continuing employment in the industry, rather than shift to other industries. \* \* \* Rules that require policy selection or matching of actuarial probabilities to the conditions of an industry fall more fully to the trustees' discretion. \* \* \* The trustees can act in these areas without a showing of financial necessity.

Supp. V) 1053(a)(3)(E)(i) and 1053(b)(1)(C). But these provisions do not create an absolute "safe harbor"; the trustees' actions still must satisfy the trustees' overriding fiduciary obligations imposed by Section 404(a) of the Act. The decision below simply recognizes that where, as here, plan trustees determine to invoke in limited fashion the statutory provisions authorizing forfeiture of past service credit, such determinations may be reviewed for compliance with ERISA's "solely in the interest" requirement. As the district court noted (Pet. App. 8a), "§ 3(37) [17] does not validate provisions that are otherwise objectionable because they are discriminatorily applied."<sup>18</sup>

For the same reason, petitioner errs in suggesting (Pet. 18-21) that the court of appeals' decision conflicts with *Alessi v. Raybesto-Manhattan, Inc.*, *supra*. In that case, the Court concluded that Congress had implicitly authorized plans to integrate pension benefits with workers' compensation awards received after retirement. Because ERISA was intended to preempt state law, the Court held that New

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<sup>17</sup>Section 3(37)(A)(iv) of ERISA, 29 U.S.C. 1002(37)(A)(iv), has been superseded by Section 303(E)(i) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1292, 29 U.S.C. (Supp. V) 1053(a)(3)(E)(i). The two provisions are essentially identical, however, and thus Section 3(37) was deleted from ERISA by the 1980 amendments as superfluous. See 94 Stat. 1291-1292.

<sup>18</sup>A similar argument was rejected in *Donovan v. Bierwirth*, 680 F.2d 263 (2d Cir. 1982), cert. denied, No. 82-422 (Dec. 6, 1982). There, pension plan trustees contended that they were not in violation of Section 404(a) so long as their actions complied with other, specific provisions of ERISA, including the provision allowing a plan to invest up to 10% of its assets in employer securities (29 U.S.C. 1107(a)(2)). The court of appeals disagreed, noting that the trustees had bought additional employer securities, up to the 10% maximum, at "the worst possible time" from an investment standpoint (680 F.2d at 275). The court concluded that the trustees' conduct did "not measure[] up to the high standards imposed by § 404(a)(1)(A) and (B) of ERISA" (680 F.2d at 276).

Jersey lacked authority to forbid such plan provisions (451 U.S. at 521-526). There was no contention in that case that the integration rules were being applied in an arbitrary and capricious manner, nor any allegation that the fiduciary obligations imposed by ERISA had been violated.

**CONCLUSION**

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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